

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

Mercy St. Vincent Medical Center,)	CASE NOS.: 08-CA-128502
)	08-CA-129537
Respondent,)	08-CA-133069
)	08-CA-134215
vs.)	
)	
International Union, United Automobile)	
Aerospace & Agricultural Implement Workers)	
of America, UAW, Local 2213, RN Unit, and)	<u>MERCY'S SUPPLEMENTAL BRIEF</u>
Local 12 Technical and Support Units,)	<u>SUPPORTING ITS MOTION FOR</u>
)	<u>PARTIAL SUMMARY JUDGMENT</u>
Charging Party.		

On March 18, 2015, the General Counsel offered additional guidance as to his views on the evolving standards for reviewing employers' social media policies and employee handbooks. Within Memorandum 2015-04, the General Counsel described language from a variety of contexts which, in his view, was lawful. While the scope of that Memorandum does not fully encompass all of the language which is challenged in this case, in several respects, language expressly found acceptable in this latest guidance tracks closely with language here under review. We offer this supplemental brief for purposes of highlighting those instances.

Language being challenged in this case:

Systemwide Social Media Policy

Paragraph 10(A)(i)

1. Adhere to HIPAA patient privacy and confidentiality. Do not post proprietary or confidential information. Whether using social media for professional or personal purposes at work or outside of work, associates are bound by the Health Insurance Portability and Accountability Act (HIPAA). HIPAA protects patient privacy and promotes security and confidentiality of patient information. An example of a violation would be a physician or associate recording photographic images of a patient on a cell phone while in CHP facilities and then sharing photos and/or accounts about patient-related activities on a personal blog or social media account. This is given as an example only and does not cover the range of what HIPAA or CHP consider confidential and proprietary information.

Language expressly found acceptable by the General Counsel:

GCM 15-04, at 28-29

“During the course of your employment, you may become aware of trade secrets and similarly protected proprietary and confidential information about Wendy’s business (e.g. recipes, preparation techniques, marketing plans and strategies, financial records). You must not disclose any such information to anyone outside of the Company.”

Language being challenged in this case

Paragraph 10(A)(ii)

6. Do not disclose confidential information or violate copyrights. Associates must comply with copyrights, trademarks and disclosures, and not reveal proprietary financial, intellectual property, patient care or similar sensitive or private content while using social media. Do not give specific medical advice that could create the appearance of a caregiver/patient relationship. Associates must not share confidential information, such as patient, operational and financial data, or post video/photographic images taken in the workplace or work-related functions, without first obtaining appropriate permission.

Language expressly found acceptable by the General Counsel

GCM 15-04, at 15

“Respect all copyright and other intellectual property laws. For [the Employer’s] protection as well as your own, it is critical that you show proper respect for the laws governing copyright, fair use of copyrighted material owned by others, trademarks and other intellectual property, including [the Employer’s] own copyrights, trademarks and brands.”

GCM 15-04, at 27

“Respect copyright, trademark and similar laws and use such protected information in compliance with applicable legal standards.”

GCM 15-04, at 6

“Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.”

Language being challenged in this case

Paragraph 10(A)(iii)

Social Media Guidelines and Best Practices

5. What you say online will reflect on you, your fellow associates and the public's view of your workplace. Remember that if you wouldn't want your colleagues or manager – or your mother! – to see your comments, it is unwise to post them on the internet. Also, please remember that your postings – both internal and external – involving patients, other employees (including peers, subordinates and supervisors) and other professionals may have legal and other implications in the workplace. Comments or behavior that would be inappropriate in the workplace are also inappropriate in the context of social media.

Language expressly found acceptable by the General Counsel

GCM 15-04, at 28

“Be thoughtful in all your communications and dealings with others, including email and social media. Never harass (as defined by our antiharassment policy), threaten, libel or defame fellow professionals, employees, clients, competitors or anyone else. In general, it is always wise to remember that what you say in social media can often be seen by anyone. Accordingly, harassing comments, obscenities or similar conduct that would violate Company policies is discouraged in general and is never allowed while using Wendy's equipment or during your working time.”

Language being challenged in this case

Paragraph 10(A)(v)

8. Think about consequences. Imagine you are at a public meeting and someone in the audience has a printout of something that you have posted which is unfavorable toward your hospital or CHP. This could be used in a way that you did not intend. Once again, it's about using your best judgment. Using your public voice to trash or embarrass the organization, your patients, your co-workers, or yourself, is not only dangerous, but not very smart.

Language expressly found acceptable by the General Counsel

GCM 15-04, at 28

“Be thoughtful in all your communications and dealings with others, including email and social media. Never harass (as defined by our antiharassment policy), threaten, libel or defame fellow professionals, employees, clients, competitors or anyone else. In general, it is always wise to remember that what you say in social media can often be seen by anyone. Accordingly, harassing comments, obscenities or similar conduct that would violate Company policies is discouraged in general and is never allowed while using Wendy's equipment or during your working time.”

Language being challenged in this case

Paragraph 10(A)(ix)

19. Discourtesy to, or improper treatment of patients, visitors, or other employees.

Language expressly found acceptable by the General Counsel

GCM 15-04, at 9

“No “rudeness or unprofessional behavior toward a customer, or anyone in contact with” the company.

“Employees will not be discourteous or disrespectful to a customer or any member of the public while in the course and scope of [company] business.”

Language being challenged in this case

Paragraph 10(A)(xii)

4. *Accessing and/or* divulging information that becomes accessible through association with MSVMC that should be considered as confidential and/or proprietary, including information related to patients and their care. (Emphasis in the original)

Language expressly found acceptable by the General Counsel

GCM 15-04, at 28-29

During the course of your employment, you may become aware of trade secrets and similarly protected proprietary and confidential information about Wendy’s business (e.g. recipes, preparation techniques, marketing plans and strategies, financial records). You must not disclose any such information to anyone outside of the Company.

GCM 15-04, at 6

No unauthorized disclosure of “business ‘secrets’ or other confidential information.”

“Misuse or unauthorized disclosure of confidential information not otherwise available to persons or firms outside [Employer] is cause for disciplinary action, including termination.”

“Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.”

CONCLUSION

For these reasons, in addition to those already briefed by Mercy, the Board should grant Mercy's summary judgment on the §§8(a)(1) and (5) allegations outlined in ¶10(A)(i)-(vi), (ix-x)(xii)(B), 13(C)(D); and should deny the General Counsel's Motion concerning the same sections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of March, 2015, a copy of the forgoing was filed electronically. Notice of this filing will be sent by operation of the NLRB's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the NLRB's system. On March 30, 2015, a copy of the forgoing was also served via e-mail communication to Joseph Rioux and Gina Fraternali, and hard copies were also served upon the following individuals via regular U.S. Mail.

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